

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of SHANNON  
PAIGE PIKE and MICHAEL  
BURKE HARRELL

SHANNON PAIGE PIKE  
HARRELL,

Appellant,

v.

MICHAEL BURKE HARRELL,

Respondent.

B287700

(Los Angeles County  
Super. Ct. No. BD614893)

APPEAL from orders of the Superior Court of Los Angeles  
County, Colin P. Leis, Judge. Affirmed.

Law Offices of Charles Rosenberg and Charles Rosenberg  
for Appellant.

Law Offices of Michael L. Maguire and Associates,  
Michael L. Maguire, James L. Keane, and Andres J. Breitman for  
Respondent.

\* \* \* \* \*

In 2014, wife Shannon Paige Pike Harrell and husband Michael Burke Harrell obtained a divorce decree in Italy, where they were then residing due to husband's work. The decree did not address the division of marital assets, as most of the parties' assets were located in the United States, but awarded wife spousal support, and awarded husband and wife joint custody of their two children.

Wife and the minor children relocated to California, and wife registered the Italian decree here for enforcement. She also commenced a separate dissolution action, in which she sought modification of the Italian divorce decree and division of the marital assets.

Husband challenged the court's jurisdiction over him, and authority to modify the Italian judgment, in repeated motions to quash, and requests for orders. Ultimately, the court found that although wife could not collaterally attack the Italian judgment, the court had jurisdiction to modify the support order, and wife had demonstrated a change in circumstances warranting increased support. The court also awarded wife a portion of her attorney fees.

Wife appeals, contending the court's support order failed to consider the parties' marital standard of living. She also contends the court abused its discretion by failing to award the entirety of her requested attorney fees.

Husband, who has not appealed,<sup>1</sup> revisits many of the claims of error he asserted below, and seeks reversal of the

---

<sup>1</sup> Husband filed a notice of cross-appeal, but his appeal was abandoned and dismissed, and remittitur issued in June 2018. He also challenged the family court's jurisdiction over the dissolution action by petition for writ of mandate, which this court summarily denied.

support order and fee award. Alternatively, he contends the support and attorney fee orders were not an abuse of discretion.

We decline to consider husband's claims of error, find no abuse of discretion, and affirm the orders below.

### **BACKGROUND**

Husband and wife were married in New York in 1996, and had two children, born in 1998 and 2000. Wife petitioned for divorce in 2010 in Como, Italy, where the family was living due to husband's work as an executive with UPS. Husband and wife agreed the Italian court should apply California law in the proceedings. The Italian court recognized that the parties "enjoyed a high standard of living," attributing nearly \$480,000 in income to husband. The court found that wife derived \$1,675 per month in income from real property owned by the parties in the United States.

The Italian court dissolved the marriage, and awarded wife spousal support of 2,500 Euros per month (about \$2,800), for a period of seven years. The parties were given joint custody of their minor children, with "prevalent" custody going to wife, and awarded wife child support in light of her prevalent custody of the children. The Italian court did not decide how the marital assets were to be divided, noting that "examination of financial aspects still remains subject to the aforementioned California law." The judgment of dissolution was entered by the clerk in Como, Italy on March 10, 2014.

On January 26, 2015, wife filed a registration action, seeking to register the out-of-state custody and support order with the Los Angeles Superior Court. On February 17, 2015, she filed a petition for legal separation. She filed an amended petition on July 22, 2015, seeking dissolution rather than legal separation. The Judicial Council form petition for dissolution

requested, under “other requests,” that the “Divorce decree issued in the Republic of Italy be rendered null and void because the parties were not domiciliaries of said country at the time divorce petition was filed and litigated.” The petition also requested that the court determine the parties’ rights to community property and debts. Filed along with the petition was a declaration under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA; Fam. Code, § 3400 et seq.), declaring that a custody judgment concerning the parties’ minor children had been rendered in Como, Italy.

Husband made a number of filings challenging registration of the Italian decree, and seeking to quash service of the dissolution action. Among the arguments advanced by husband was that wife was barred from relitigating the issues decided by the Italian divorce decree, as she failed to appeal that decree, and it was long since final and binding upon the parties. Husband also argued that wife had “abducted” their minor children from Italy.<sup>2</sup>

Husband ultimately stipulated to the “registration of the entire Italian Judgment, including but not limited to all child custody and visitation, child support, spousal support, property division, and attorney’s fees and costs orders, for the purpose of enforcement only.” And, on September 28, 2015, the court ordered the registration and dissolution actions consolidated. On November 10, 2015, the court granted husband’s request to quash wife’s amended petition for dissolution of marriage, in part, quashing it only as to the determination of the parties’ marital status, but otherwise allowing the petition to stand as to the

---

<sup>2</sup> Criminal and civil proceedings regarding the “abduction” of the children had apparently been commenced in Italy.

other issues raised by the petition, including division of the community's assets and liabilities.

On September 29, 2015, wife filed a request for an order modifying the Italian spousal and child support order, seeking nearly \$20,000 per month in spousal support. She also requested that husband advance her attorney fees of \$20,000.

In response, husband consented to paying guideline child support, but otherwise opposed wife's request for an order, reasoning the superior court did not have jurisdiction to modify the Italian support order, and that it only had jurisdiction to enforce the order made by the Italian court.

In reply, wife argued that the Italian court no longer had continuing exclusive jurisdiction over the spousal support order. She provided declarations by "Italian law experts" asserting that "Italian law does not provide continuing exclusive jurisdiction over support."

On April 7, 2016, at an evidentiary hearing to determine husband's income for the purpose of determining support, the court concluded that it lacked jurisdiction to modify the Italian support order under Family Code section 5700.211, but that it could take jurisdiction upon an "affirmative showing that the Italian court has yielded jurisdiction over spousal support."<sup>3</sup>

On August 8, 2016, wife filed a request for an order seeking reconsideration of the court's determination that it did not have jurisdiction to modify the Italian support order. Wife included a declaration from an Italian law professor, Nerina Boschiero,

---

<sup>3</sup> Family Code section 5700.211, subdivision (b) provides: "A tribunal of this state may not modify a spousal-support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country."

asserting that the Italian court no longer had jurisdiction over spousal support, and a February 11, 2016 order from the Court of Como, Italy, finding that the court “does not have jurisdiction in this case.” The Italian order acknowledged that proceedings had been commenced in California, and declared that “the Italian Judge has no jurisdiction in this matter and recognizes the jurisdiction of the Judge in the United States (California State).”

Husband opposed the request, asserting it was not based on any new facts or law, and that the Italian court had relinquished jurisdiction only over child custody issues and not spousal support, among other arguments.

On September 26, 2016, the family court vacated its April 2016 finding that it lacked jurisdiction to modify the spousal support provision of the Italian decree. The court determined that the Italian court had expressly found that it no longer has jurisdiction, and assented to the jurisdiction of the California courts, and that its ruling extended to spousal support.

Husband sought reconsideration of the court’s ruling, and again sought to quash service of the summons for lack of personal jurisdiction, arguing, among other things, that wife lacked standing to commence the dissolution action because the parties were already divorced, and that the cases were improperly consolidated by the trial court. These requests for relief were extensively litigated by the parties, resulting in voluminous filings. The court ultimately denied husband’s requests for relief.

Wife thereafter filed a new request for an order seeking modification of the Italian support order, this time seeking spousal support of \$10,685 per month, arguing that the Italian court “incorrectly applied California law, failed to consider [husband’s] total monetary compensation, [and] failed to consider the marital standard of living . . . .” She also argued that her

circumstances had changed since the Italian order was entered, reasoning that she did not receive any income from the parties' properties, as contemplated by the Italian court, and that husband had additional bonus income which should be considered. According to wife, husband's salary was approximately \$500,000, and he received numerous fringe benefits in addition to his salary, paying for his housing, transportation, and travel. Wife requested that husband be ordered to pay her attorney fees of \$195,037. Wife included an attorney declaration and invoices detailing the fees she had incurred.

Wife's income and expense declaration averred that she was then earning \$1,425 per month in wages, and had \$28,000 cash on hand. Her total expenses were \$6,579 per month, of which she was paying \$3,750 in rent. She owed her attorney \$195,036.80 in fees, and had only advanced \$5,000 to her attorney.

Wife declared she was not able to work while living abroad with husband, and that she dedicated herself to domestic duties such as raising their children. Although she had completed four years of college, she was only able to obtain part-time work, and required additional training to obtain better employment. She intended to take real estate and business courses to pursue a career in property management.

Husband was enjoying a lavish lifestyle in Paris, while she and the children could "barely pay[] for the apartment, living expenses and school expenses." Before the divorce, the family had dined at exclusive restaurants, driven luxury cars, gone on exclusive vacations (with an annual vacation budget of \$15,000 to \$30,000), lived in lavish homes, had maids and other domestic help, and hosted lavish parties.

Husband opposed the request for an order. He reiterated his previous unsuccessful arguments that the court did not have jurisdiction to modify the Italian support order, and that the court lacked personal jurisdiction over him. He also argued that wife could not collaterally attack the Italian judgment, and that there had not been a material change in circumstances since the Italian judgment was issued. He opposed wife's request for attorney fees, arguing the amount requested was unreasonable, and there was no disparity in the parties' ability to pay fees because of wife's significant community property interests. For example, wife was entitled to UPS stock worth approximately \$350,000. Husband had proposed a global property settlement to resolve the division of the community assets, and wife refused to discuss the settlement, urging that the issue of attorney fees had to first be resolved.

According to husband's declaration, wife had grossly exaggerated their marital standard of living, and his current circumstances. After paying his spousal and child support obligations, husband had only \$6,000 per month remaining on which to live.

The hearing on wife's request for an order was held on September 22, 2017. The court heard argument from the parties, and took the matter under submission. The court issued its ruling on November 20, 2017. The court declined to revisit its earlier rulings on jurisdiction. The court found wife sought to collaterally attack the Italian judgment by claiming the Italian court had not correctly applied California law, and that the Italian court had, in fact, considered the parties' high marital standard of living when it made its award. The court did, however, conclude that wife demonstrated a material change in circumstances justifying modification of the support order



because wife had relocated to California, and had not received any investment income from the parties' properties in the United States, as contemplated by the Italian judgment.

The court applied the factors set forth in Family Code section 4320, subdivisions (a) through (l), specifically considering husband's "substantial" income and assets, wife's lack of job skills and "the sufficiency of [her] earning capacity to maintain [the] marital standard of living," and concluded wife's spousal support should be increased by \$1,675 per month, "which is the amount of unrealized investment income the Italian court anticipated [wife] would receive . . . ."

Regarding wife's request for attorney fees, the court acknowledged that husband was a highly paid UPS executive, while wife only worked part time. The court found, however, that wife's unwillingness to accept her share of UPS stock until the fee issue had been resolved was "an attempt to claim poverty in order to bolster her request for fees." Therefore, the court charged wife with the availability of at least \$350,000 from which the fees could be paid. The court also found that husband had repeatedly made jurisdictional challenges to the proceedings, forcing wife to incur significant fees "against [husband's] sustained and sophisticated litigation onslaught." The court ordered husband to contribute \$100,000 towards wife's fees.

Wife filed a timely notice of appeal. Husband filed a notice of cross-appeal, but his appeal was abandoned and dismissed, and remittitur issued in June 2018.

## **DISCUSSION**

Wife contends the court did not consider the marital standard of living when it made its order modifying the Italian support order. She also contends the fee award was insufficient.

She does not otherwise complain that the court misapplied the law.

Husband, however, has raised a number of claims of error which would significantly broaden the scope of the appeal, for which husband has not separately appealed.<sup>4</sup> Husband contends the court lacked subject matter jurisdiction over the dissolution action, reasoning that wife lacked standing to bring the dissolution action because the parties were already divorced. He also contends the court lacked jurisdiction to modify the Italian support order under Family Code section 5700.211, reasoning the Italian court never relinquished jurisdiction over the spousal support order. He takes issue with the order consolidating the cases below, and argues that wife's request for modification was an impermissible collateral attack on the Italian judgment. For all of these reasons, husband seeks reversal of the support and attorney fees orders.<sup>5</sup>

Husband contends we may reach his arguments, even in the absence of a cross-appeal, reasoning that challenges to subject matter jurisdiction may be raised at any time, without

---

<sup>4</sup> Wife has moved to strike the portions of husband's brief addressing issues which he has not appealed. We deny the motion, finding that the offending portions of the brief are relevant to our determination, *post*, that the parties should bear their own costs on appeal.

<sup>5</sup> Husband also contends a number of procedural defects prevent appellate review, such as a lack of record citations in a portion of wife's brief, her failure to include certain filings in her appendix, her failure to cite authority for some of her propositions, and that her appendix is not text-searchable, among others. None of the claimed deficiencies hindered this court's ability to review the claims made on appeal, especially in light of the filing of a respondent's appendix.

the need for a cross-appeal. (See *Totten v. Hill* (2007) 154 Cal.App.4th 40, 46 [“ ‘The adequacy of the court's subject matter jurisdiction must be addressed whenever that issue comes to the court’s attention.’ ”].)

We are not persuaded. A respondent who has not filed a cross-appeal cannot seek a change in the judgment. (*Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439.) The limited exception to this rule advanced by husband has no application here. First, husband has raised a host of issues other than subject matter jurisdiction in his respondent’s brief. Moreover, his jurisdictional challenge (which was also raised by a writ petition which we summarily denied) has no merit. The Italian court order dissolved the marriage, awarded spousal support, and awarded joint custody. The trial court quashed wife’s petition for dissolution, to the extent it sought to dissolve the parties’ marriage, since that had been adjudicated in Italy. The Italian court relinquished jurisdiction to California to make further orders pursuant to the UCCJEA. It is axiomatic that a court hearing a dissolution action may make a number of orders, unrelated to the marital status of the parties, including custody, support, division of marital assets, and attorney fees. (Fam. Code, § 2010.) The Italian judgment explicitly left unresolved the division of the community assets for decision by another court. We therefore find that, in the absence of a cross-appeal, we may not consider husband’s arguments seeking reversal of the orders below.

### **1. Spousal Support**

Wife contends the family court failed to consider the parties’ marital standard of living when it made its support order. In ordering spousal support, “the trial court *must* consider and weigh all of the circumstances enumerated in [Family Code

section 4320],[<sup>6</sup>] to the extent they are relevant to the case before it.” (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 302.) The section 4320 circumstances are equally relevant to the determination of whether to *modify* a spousal support order. (*In re Marriage of West* (2007) 152 Cal.App.4th 240, 247.) While the “marital standard of living” is the reference point by which the other factors listed in section 4320 must be weighed, “[t]he Legislature has never specified that spousal support must always meet the needs of the supported spouse as measured by the marital standard of living. . . . In most instances, it is impossible at separation for either party to have sufficient funds to continue to live in the same life-style enjoyed during the marriage. After separation the parties have two households rather than one, and with California’s high housing costs this represents a significant increase in living expenses.” (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 488-489.)

We review an order modifying spousal support for an abuse of discretion. “‘In exercising its discretion the trial court must follow established legal principles and base its findings on

---

<sup>6</sup> Family Code section 4320 requires the court to consider, as is relevant here: “(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following: [¶] (1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment. [¶] (2) The extent to which the supported party’s present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.”

substantial evidence. [Citation.] If the trial court conforms to these requirements its order will be upheld whether or not the appellate court agrees with it or would make the same order if it were a trial court.’ ” (*In re Marriage of West, supra*, 152 Cal.App.4th at p. 246.)

The parties provided conflicting evidence on the marital standard of living, with husband’s declaration challenging wife’s assessment of their circumstances during marriage. We do not reweigh the evidence or resolve factual disputes. The court below expressly considered the marital standard of living in crafting its order. The court applied the factors set forth in Family Code section 4320, subdivisions (a) through (l), specifically considering husband’s “substantial” income and assets, wife’s lack of job skills and “the sufficiency of [her] earning capacity to maintain [the] marital standard of living.” We find no abuse of discretion.

## **2. Attorney Fees**

Wife contends the court erred in awarding her only a portion of her requested fees. “ ‘ “California’s public policy in favor of expeditious and final resolution of marital dissolution actions is best accomplished by providing . . . a parity between spouses in their ability to obtain effective legal representation.” ’ ” (*In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 866.) “Pursuant to Family Code sections 2030 and 2032, the trial court is empowered to award fees and costs between the parties based on their relative circumstances in order to ensure parity of legal representation in the action. It is entitled to take into consideration the need for the award to enable each party to have sufficient financial resources to present his or her case adequately. In assessing a party’s relative need and the other party’s ability to pay, it is to take into account “ ‘all evidence concerning the parties’ current incomes, assets,

and abilities.’ ” ’ ” ( *In re Marriage of Falcone & Fyke* (2012)  
203 Cal.App.4th 964, 974-975, fn. omitted.)

“[T]he trial court has broad discretion in ruling on a motion for fees and costs; we will not reverse absent a showing that no judge could reasonably have made the order, considering all of the evidence viewed most favorably in support of the order.” ( *In re Marriage of Falcone & Fyke*, *supra*, 203 Cal.App.4th at p. 975.) “The fact that the party requesting an award of attorney’s fees and costs has resources from which the party could pay the party’s own attorney’s fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.” (Fam. Code, § 2032, subd. (b).)

The family court awarded wife substantial fees, largely due to husband’s “sustained and sophisticated litigation onslaught,” and reasonably concluded that wife was attempting to bolster her claim for attorney fees by delaying the settlement of the community’s estate, and that wife should therefore be responsible for a portion of her fees, as she had assets which were available to her. We find no abuse of discretion in the fee award.

#### **DISPOSITION**

The orders are affirmed. The parties are to bear their own costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.